

OGC HAS REVIEWED.

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Transportation - 4

17 September 1954

MEMORANDUM FOR: Deputy Director (Administration)

SUBJECT : Claim for Reimbursement for Shipment of Household Effects - Case of [REDACTED] 25X1A9a

REFERENCE : Unstd memo for DD/A fr DAD/P, same subject

25X1A9a 1. By routing slip dated 20 August 1954 the opinion of this Office was requested as regards the propriety of this Agency's reimbursement of [REDACTED] for the cost of shipment of his household effects from Kansas City, Missouri, to Washington, D. C.

25X1A9a 2. The facts, as set out in the record and supplemented in a telephone conversation with [REDACTED] are these. [REDACTED] 25X1A
25X1A [REDACTED] was on duty at Elmendorf Air Force Base, Alaska. At the conclusion of his tour it was decided to transfer him to Washington, D. C., and detail him for duty with the Central Intelligence Agency. On or about 12 June 1953, while at Elmendorf, [REDACTED] received a letter from the Chief, Military Personnel Division, advising him in a routine manner of the possibility of his being assigned with the Agency and giving him certain generalized instructions. The next to last paragraph of this letter read as follows:
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"Government quarters for families are usually not available in Washington, although apartments and houses are available for rental in Washington and in nearby suburban areas. However, you are advised not to bring your family or make any housing commitments (such as leasing or purchase) until your security clearance has been completed and you have been fully briefed concerning your duties. With the exception of Government quarters, all of the facilities normally found on a military or naval installation are ample in the Washington area. Included are commissaries, medical facilities, exchanges, clothing stores, clubs, theaters, etc." (Emphasis supplied)

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A few days later [redacted] received official telegraphic notification from the Air Force [redacted]

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[redacted] On the authority of this telegram [redacted] travel orders to Washington, D. C., were cut. These provided for the shipment of his household effects only so far as Kansas City, Missouri. The reason that [redacted] did not ship his household effects to Washington is that he interpreted the phrase

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"However, you are not advised to bring your family (to Washington) or make any housing commitments . . ."

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in [redacted] letter as instructing him also not to bring his household effects to Washington. It is [redacted] point of view that family and household effects are inseparable and, for purposes of military travel, one and the same. He selected Kansas City because he knew some people there, it being his former home. [redacted] traveled to Washington, dropping his family off in Kansas City en route. In the fall of 1953, having found suitable quarters for his family, he brought them to Washington and then had his household effects shipped to Washington from Kansas City.

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3. Against this background it is [redacted] contention that the cost of this last shipment should be borne by this Agency. He so believes because he looks upon the letter from MPD as having instructed him not to follow the usual procedure of shipping household effects straight from one permanent duty station to another. Since this interpreted instruction was made by this Agency, Major [redacted] thinks the Agency should be responsible.

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4. These circumstances present a problem in reshipment of the same property. This general topic is covered by Section 8013 of the Joint Travel Regulations which reads as follows:

"1. GENERAL. Unless otherwise specifically provided herein, authority contained in these regulations for shipment of household goods at government expense extends only to the through shipment to authorized ultimate destination of the same lot of household goods or effects. Shipment may not be made for the convenience of the member to some other place for reshipment later to such authorized ultimate destination.

2. IMPROPER SHIPMENTS. When household goods within prescribed weight allowance or personal baggage not to exceed 200 pounds for personnel not having a prescribed

weight allowance, including allowances provided in pars. 8010 and 8011, have been improperly shipped or otherwise unavoidably separated from the member, not because of fault of the member, it may be forwarded to the proper destination at government expense upon approval of the service concerned.

3. RETURN OF PERSONAL BAGGAGE TO OWNER. In case personal baggage is shipped as part of an organized troop movement but the name of the individual owner of such baggage has been deleted from the movement order, railway express instead of means ordinarily required may be used to return or forward such baggage to the duty station of such member when authorized or approved in writing by the commanding officer of the installation or area at which received. When an officer on the immediate staff of the commanding officer is authorized to issue travel orders, the commanding officer may delegate to such staff officer the authority to authorize the return or forwarding of such shipments by express. Reference to such authorization, including its date, will be indicated under "Authority for shipment" on bills of lading issued for shipments forwarded under these provisions.

4. SHIPMENT UPON CANCELLATION OF ORDERS. Shipment of household goods made after receipt of competent change of station orders but before the effective date thereof will be forwarded or returned to proper destination at government expense in case such orders are subsequently amended or canceled, provided such shipment is made in the best foreseeable interest of the Government and the member."

It will be observed that this regulation provides for the through shipment of household goods or effects to their authorized ultimate destination except in the instances of (a) improper or misdirected shipments, (b) the return to the owner of personal baggage which has been shipped with organizational baggage, and (c) cancellation or change of orders. None of these circumstances obtained in [REDACTED] case. While there may be some question as to the authority under which his household goods were shipped to other than his permanent duty station, it is significant here only that they were in Kansas City and for the reasons that [REDACTED] thought he could not bring them to Washington, apparently did not wish to leave them at Elmendorf, and, for lack of some place else to put them, selected Kansas City, his former home.

5. From the above we would conclude that there is no authority for reimbursement to [REDACTED] for the shipment of his household goods from Kansas City to Washington in the Joint Travel Regulations.

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6. A second consideration is whether there is any authority in the Agency Travel Regulations for reimbursement of the expenses in question. [REDACTED] dated 23 February 1954, paragraph 1-a thereof, states in relevant part:

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"Military personnel serving with the Central Intelligence Agency are entitled only to the pay, allowances, and other monetary benefits to which they would be entitled were they serving their parent service at the same post of assignment. However, detailed military personnel may be authorized, at the discretion of this Agency, certain of the travel, transportation, and allowance entitlements of civilian personnel of the Agency in lieu of the comparable entitlements of the parent service. . . ." (Emphasis Supplied)

Paragraph 6500 of the Joint Travel Regulations, Part K thereof, states:

"Unless otherwise provided for or restricted by law, a member on loan, assignment, or detail to another department or agency may be authorized travel, transportation, or station allowances pertaining to such other department or agency or those pertaining to his own department or agency, whichever is greater."

It is the sense of these regulations, inter alia, that military personnel detailed to CIA may avail themselves of those travel benefits of either their parent service or the Agency, whichever is more favorable to them. However, with a possible exception discussed below, a review of the Agency Travel Regulations by this Office reveals that there is no authority in them for the reimbursement of [REDACTED] in his particular circumstances.

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7. Finally, there is the consideration of whether or not [REDACTED] may be reimbursed under the authority of Agency [REDACTED] paragraph 9-a thereof. This paragraph reads as follows:

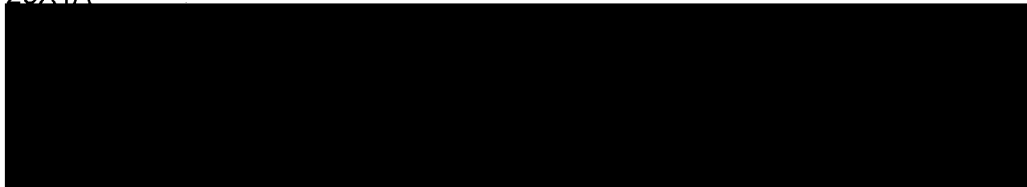
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"When authority is not otherwise specifically provided in Agency Regulations, the Deputy Director (Administration) may take final action on any matter arising out of the unusual functions of this Agency and involving the expenditure of confidential funds, if the expenditure involved in each matter does not exceed \$2,500. The term 'unusual functions' as used herein is intended to differentiate the extraordinary problems of this Agency from the normal administrative or operating problems confronting the ordinary Government agency." (Emphasis Supplied)

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While [redacted] was in effect there was a practice in the Agency to consider it for application to situations involving Agency personnel in which the regulations normally applicable to a given set of circumstances were unfavorable to the relief sought but also in which there were considerations of an equitable nature which seemed to argue for favorable treatment. While the new regulation, as will be indicated below, is couched in more restrictive language than was the old, still there is the possibility of applying it to what may be categorized as "hardship situations." This possibility has been indicated by the Deputy Assistant Director for Personnel in the referenced memorandum.

8. Before proceeding to a discussion of the equities involved, we would like to point out the previously alluded to restrictive character of the new regulation. In the second sentence of that regulation it is pointed out that:

"The term 'unusual functions' as used here is intended to differentiate the extraordinary problems of this Agency from the normal administrative or operating problems confronting the ordinary Government agency."

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This language did not appear in old [redacted] of the Confidential Funds Regulations. In fact, the only criteria furnished for the application of that regulation were that (a) the matter under consideration involved the expenditure of confidential funds and (b) the amount of money involved did not exceed \$2500.

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9. As for the equities involved, we see them as these. Favorable to [redacted] are the following considerations:

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(a) The possibility that the cited portion of the letter from the Military Personnel Division could be interpreted as a directive not to bring his household goods and personal effects to Washington. [redacted] so interpreted it. He so did, he informs, because he had had no previous experience with the Agency; because he had "no one to turn to" at Elmsdorf for an interpretation of its precautionary language; because he could not be sure that he would pass the security examination and so be retained for duty in Washington.

25X1A9a (b) Kansas City is almost on a direct route of shipment between Elmendorf and Washington. This is pointed out by [REDACTED] Chief, Military Personnel Division, in his memorandum for the Assistant Comptroller, which is Enclosure 2 of the referenced memorandum. This being so and considering that the Air Force would have shipped the household and personal effects straight through to Washington had [REDACTED] not requested otherwise, the Government would not be appreciably out of pocket by reimbursing Major [REDACTED] at this time from what it would have been had the effects been shipped all the way through initially.

25X1A (c) There is no doubt but, had it not been for Colonel [REDACTED] letter, originating with this Agency, Major [REDACTED] would have shipped his effects straight through. From this a certain equitable responsibility for the expense incurred arguably can be attributed to CIA.

Contra there are the following:

(a) On the issue of the reasonableness of [REDACTED] 25X1A9a interpretation of the Military Personnel Division's letter is the consideration that, so far as this Office is aware, it has not been so interpreted before. Apparently a large number of military personnel of all of the services have received this form letter in the past and have not experienced the difficulty with it which [REDACTED] 25X1A9a experienced.

25X1A9a (b) [REDACTED] is a transportation officer, and there can be imputed to him a more extensive knowledge of Government and service transportation regulations than fairly can be imputed to a member of one of the armed services whose experience has been in other fields. He should have known that, even had he sent his effects straight through to Washington and then either failed to qualify under the security examination or been assigned to some other area, his parent service would have reshipped his effects to a different location at no cost to him. So much is provided for in paragraph 4 of Section 8013 of the Joint Travel Regulations, supra. Thus, he would not have been out of pocket had he shipped his effects straight through and had those circumstances which he says caused him not to ship them straight through come to pass.

(c) We feel it not presumptuous to take notice of the fact that the usual modus operandi in the circumstances of the transfer of a service officer from one permanent station

to another is different from that adopted by [REDACTED] 25X1A9a
 It is an accepted consequence of service life, absent a
 promise to assign him quarters, for an officer newly
 arriving at the station, that housing will not be
 immediately obtainable. However, this does not mean that
 household effects cannot be shipped through to the new
 post of duty. To the contrary, all of the services
 maintain receiving depots for the storage of the effects
 of newly arriving officers until such time as these
 officers can obtain quarters and set up their effects
 in them. The usual thing in a tight housing situation is
 for the officer concerned to ship his household goods and
 effects straight through to the new station for retention
 on storage by the appropriate facility of his parent
 service, to leave his dependents either at their former
 home or a way-station, and himself come to the new station
 to make his housing arrangements as time and circumstances
 allow. Then he will send for his dependents, take his
 household goods and effects out of storage and set up his
 home. Finally, the letter in question did not instruct
 [REDACTED] to do what he did. Specifically, it instructed
 him not to bring his family and not to make housing commitments.
 Such instruction does not necessarily obviate the through
 shipment of household goods and effects until such time as
 either quarters are obtainable at the new post or another
 station is decided upon.

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10. On the basis of the foregoing, the issue ultimately
 presented is whether or not [REDACTED] claim is one susceptible
 to favorable treatment under [REDACTED]. If it
 is felt that there is a sufficient connection between the "unusual
 functions" of this Agency, here represented by (a) the operative
 effect of the Military Personnel Division's letter and (b) the
 requirement that actual employment with the Agency is contingent
 upon the previous passing of the security examination, then this
 Office would have no legal objection to the reimbursement of
 [REDACTED] under the authority of the regulation.

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Office of the General Counsel

1 Att - Listed in Reference

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